

ESTTA Tracking number: **ESTTA445205**

Filing date: **12/07/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Power Analytics Corporation
Granted to Date of previous extension	12/07/2011
Address	16870 West Bernardo Drive, Suite 330 San Diego, CA 92127 UNITED STATES
Attorney information	Barry F. Soalt Procopio Cory Hargreaves & Savitch LLP 525 B Street, Suite 2200 San Diego, CA 92101 UNITED STATES docketing@procopio.com, glj@procopio.com Phone:619 525 3865

### Applicant Information

Application No	85259140	Publication date	08/09/2011
Opposition Filing Date	12/07/2011	Opposition Period Ends	12/07/2011
Applicant	Midrange Performance Group 100 Arapahoe #14 Boulder, CO 80302 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. First Use: 2011/03/01 First Use In Commerce: 2011/03/03  
All goods and services in the class are opposed, namely: Software for gathering and analyzing computer performance data

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3118508	Application Date	03/01/2005
Registration Date	07/18/2006	Foreign Priority Date	NONE
Word Mark	POWER ANALYTICS		

Design Mark	<b>POWER ANALYTICS</b>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2005/04/18 First Use In Commerce: 2005/04/18 Computer software for real-time monitoring, analysis and predictive control of electrical power distribution system infrastructures for mission critical facilities, such as submarines and airports, to ensure uninterrupted operations of said infrastructures and the critical processes they support

Attachments	78577838#TMSN.jpeg ( 1 page )( bytes ) Notice of opposition.pdf ( 5 pages )(555565 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/bfs/
Name	Barry F. Soalt
Date	12/07/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 85/259,140  
Published in the Official Gazette of August 9, 2011  
Application for POWER ANALYTICS in class 9

Power Analytics Corporation, a Delaware Corporation,	)	
	)	
	)	Opposition No. _____
Opposer,	)	
	)	NOTICE OF OPPOSITION
vs.	)	
	)	
Midrange Performance Group, a Colorado corporation,	)	
	)	
	)	
Applicant.	)	

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**VIA ELECTRONIC SYSTEM FOR  
TRADEMARK TRIALS AND APPEAL (ESTTA)**

**NOTICE OF OPPOSITION**

Power Analytics Corporation, is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 16870 West Bernardo Drive, Suite 330, San Diego, California 92127, hereby opposes registration of the mark POWER ANALYTICS, application Serial No. 85/259,140, filed by Midrange Performance Group aka MPG ("**Applicant**"), a Colorado corporation, having a principal place of business at 100 Arapahoe #14, Boulder, Colorado 80302, published on August 9, 2011, and Opposer requests that registration of this application be refused.

The Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

As grounds in support of its opposition, Opposer asserts as follows:

1. On March 6, 2011, Applicant filed a trademark application to register the mark POWER ANALYTICS in International Class 9 for “software for gathering and analyzing computer performance data”, reciting a date of first use as March 1, 2011 and first use in interstate commerce of March 3, 2011. Said application was published for opposition August 9, 2011, and Opposer filed a Request for Extension of Time to Oppose through December 7, 2011.

2. Opposer owns the registered trademark: “POWER ANALYTICS”, Registration No. 3118508, issued July 18, 2006, for “computer software for real-time monitoring, analysis and predictive control of electrical power distribution system infrastructures for mission critical facilities, such as submarines and airports, to ensure uninterrupted operations of said infrastructures and the critical processes they support”, in International Class 9 on the Supplemental Register and reciting a date of first use of April 18, 2005.

3. Opposer filed the application for POWER ANALYTICS on March 1, 2005 which matured into Registration No. 3118508, on July 18, 2006. Opposer’s first use of the POWER ANALYTICS trademark commenced in April 2005, and the mark has been used by the Opposer continuously thereafter.

4. Opposer’s use, filing and registration of the POWER ANALYTICS mark in the aforesaid registration occurred long prior to Applicant’s first use and/or filing date of any application for registration of the POWER ANALYTICS mark, and therefore, predates any use or constructive use/filing and/or use date by the Applicant in Application Serial No 85/259,140.

5. Applicant’s POWER ANALYTICS mark is identical to and carries the same commercial impression as Opposer’s POWER ANALYTICS mark. Applicant’s computer software offered under its POWER ANALYTICS designation is related to the Opposer’s

“software for real-time monitoring, analysis and predictive control of electrical power distribution system infrastructures”. The utility, features, functionality and intended fields of use of Applicant’s software, as set forth in its application Serial No. 85/259,140 is broad and overlapping with Opposer’s goods and services under Opposer’s “POWER ANALYTICS” mark and registration. The POWER ANALYTICS software offered by both parties is closely related.

6. Opposer has expanded its use of the POWER ANALYTICS mark on software for use for real-time monitoring, analysis and predictive control of electrical power distribution system infrastructures not only for mission critical facilities, but also for mirco grids and smart grids, and includes engineering consulting services and technical training and support in the same field. Opposer’s software “gathers and analyzes computer performance data”, the subject use of Applicant’s software.

7. Upon information and belief, Opposer’s goods, and Applicant’s goods both travel in the same or similar marketing channels of trade, in overlapping geographic areas, and are directed to overlapping classes of customers.

8. Opposer has spent substantial time, effort and money to promote its goods and services under its POWER ANALYTICS mark, and the mark has attained substantial goodwill and recognition in the marketplace. Over the course of nearly the past 7 years, Opposer has used the POWER ANALYTICS mark to represent the core of Opposer’s business and Opposer has adopted the “POWER ANALYTICS” mark in its tradename. Opposer’s use of the POWER ANALYTICS mark is pervasive in its field and is widely recognized.

9. Purchasers familiar with Opposer’s goods are likely to believe that Applicant’s goods, services and business are sponsored by, authorized by, endorsed by, affiliated with or otherwise approved by Opposer, because the Applicant’s POWER ANALYTICS mark is

identical to Opposer's POWER ANALYTICS mark and used with respect to "related" goods and creates a likelihood of public confusion in the marketplace.

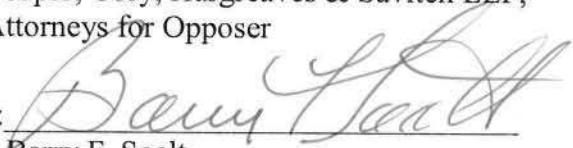
10. For the foregoing reasons, the registration of POWER ANALYTICS sought by Applicant is contrary to Section 2 of the Lanham Act, and Opposer believes that it would be damaged thereby.

WHEREFORE, Opposer respectfully requests that the Opposition be sustained and that registration of POWER ANALYTICS, Application No. 85/259,140, that is the subject of this proceeding, be refused.

Dated: December 7, 2011

Respectfully submitted,

Procopio, Cory, Hargreaves & Savitch LLP,  
Attorneys for Opposer

By:   
Barry F. Soalt


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Our Ref: 111717-1

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION is being mailed on December 7, 2011, by First Class Mail to Applicant as follows:

Midrange Performance Group  
100 Arapahoe #14  
Boulder, CO 80302  
Tel: 303-939-9648  
Fax: 303-939-9159

Dated: December 7, 2011

By:   
Geena L. Jackson